IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6672 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BN ZALA - Petitioner(s)
Versus
DANG DISTRICT PANCHAYAT & 1 - Respondent(s)

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Appearance :
MR IS SUPEHIA for Petitioner(s) : 1,
MR HARSHAD J SHAH for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 21/03/2007

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the petitioner who was at the relevant time serving as Talati-cum-Mantri, village

Manmodi, Dist: Dang has prayed for an appropriate writ, direction and/or order quashing and setting aside the order dated 2-5-1995, 13-11-1995 and 11-6-1997 by directing the respondents to treat the period of suspension of the petitioner from 14-10-1983 to 15-1-1995 as duty for all purposes and to pay the resultant arrears with 12% interest.

2. By order dated 14-10-1983 passed by the respondent No.2, the petitioner was suspended from service pending the prosecution in respect of misappropriation of government money. It is the case on behalf of the petitioner that the petitioner was prosecuted for the offence punishable under sections, 409, 468, 477-A read with section 114 of the IPC. However, by judgment and order dated 8-3-1994 passed by the learned JMFC, Vasda in Criminal Case No.474 of 1982, the petitioner came to be acquitted. That by order dated 11-1-1995, the petitioner was reinstated in service and accordingly the petitioner resumed the duties on 16-1-1995. That by order dated 2-5-1995, the respondent No.2 regularized the period of suspension of the petitioner by stating that (i) if during the period of suspension the petitioner had remained absent then for the period of absence he

should be granted leave and if there is no leave to his credit then leave without pay should be granted and (ii) the leave period sanctioned during suspension should be treated as on duty for all purposes and pay and allowances should be paid accordingly. Being aggrieved by the aforesaid order dated 2-5-1995, the petitioner preferred appeal before the DDO, Dang who by its order dated 13-11-1995 partly allowed the said appeal and quash and set aside the order dated 2-5-1995 of the Deputy DDO and ordered departmental inquiry to be held against the petitioner since the petitioner was acquitted on technical grounds and the decision as regards the period of suspension to be taken after the completion of inquiry. That being aggrieved by the order passed by the DDO, Dang dated 13-11-1995, the petitioner preferred further appeal before the Development Commissioner, State of Gujarat, who by its order dated 11-6-1997 dismissed the appeal. It is the case on behalf of the petitioner that by order dated 13-11-1995 the DDO has ordered that the charge sheet should be issued within 30 days. However, till filing of the petition, no charge sheet has been issued. Being aggrieved by the aforesaid orders, more particularly, not regularizing the period of

suspension from 14-10-1983 to 15-1-1995 and not considering the same as duty for all purposes, the petitioner has preferred the present SCA under Article 226 of the Constitution of India.

3. Shri Supehia, learned advocate appearing for the petitioner while relying upon the judgment and order passed by this court dated 20-8-1993 rendered in SCA No.763 of 1993 and also relying upon the government resolution dated 13-4-1970 has submitted that the action of the respondents in not regularizing the period of suspension and not treating the said period as on duty for all purposes in spite of the acquittal is absolutely illegal and contrary to the aforesaid circular dated 13-4-1970. It is submitted by him that once the order of suspension was with a specific object of prosecution or pending the prosecution and an employee is acquitted and reinstated in service, the period under suspension is to be treated as duty for all purposes. Therefore, it is requested to allow the present SCA accordingly. It was also submitted on behalf of the petitioner that no charge sheet has been issued till date.

4. In view of the fact that the order was passed by

the DDO on 13-11-1995 ordering to issue charge sheet as according to the DDO the acquittal was on technical ground and no charge sheet has been issued, this court by order dated 8-3-2007 called upon the respondents to submit why the charge sheet has not been issued till date and no departmental inquiry has been initiated against the petitioner and the respondents were directed to file affidavit-in-reply. This court also passed an order directing the DDO (Establishment) and/or any other officer to remain personally present before this court. That an affidavit-in-reply is filed by the Deputy DDO explaining the cause in not issuing the charge sheet by submitting that as the original record was in the concerned JMFC court and the office of the DDO has made several correspondence even with the TDO, Dang to collect the papers from the court. However, in spite of their best efforts, they could not get the record and because of the non-availability of the original record, action could not be taken to implement the order dated 13-11-1995. Thereafter, it has been submitted that the petitioner has been served with the charge sheet dated 17-3-2007 and it has been submitted on behalf of the Deputy DDO that the departmental inquiry will be concluded within a

period of six months.

5. It is required to be noted that in the present SCA, the petitioner has not challenged that part of a direction issued by the DDO issued in its order dated 13-11-1995 by which he has directed to issue charge sheet and initiate departmental inquiry. On the contrary, in the petition itself, it has been stated by the petitioner that even if a departmental inquiry is held, it will be defended according to law. Thus, only prayer in the present SCA is for treating the period of suspension of the petitioner from 14-10-1983 to 15-1-1985 as duty for all purposes. In support of his above prayer, the petitioner has relied upon one government circular dated 13-4-1970 (Annexure G) and the decision of this court dated 20-8-1993 rendered in SCA No.763 of 1993 (Annexure H). On considering the order of suspension dated 14-10-1983, it appears that the same was pending prosecution and not pending departmental inquiry. That the petitioner has been acquitted by the competent criminal court may be on technical ground. As per the government resolution dated 13-4-1970, where a government servant who is placed under suspension with the specific object of prosecution or

pending prosecution in the court of law and he is reinstated in service upon acquittal of the charge, the entire period from the date of suspension to the date of reinstatement in service should be treated as duty for all purposes. Even, the learned single Judge of this court in its judgment and order dated 20-8-1993 rendered in SCA No.763 of 1993 has directed the concerned authority to consider the case of the petitioner in light of the circular dated 13-4-1970 and relevant rules and orders. Under the circumstances, the impugned orders in so far as they relate to the period of suspension requires to be quashed and set aside and are accordingly set aside only with regard to the direction in respect of regularization of period of suspension and the concerned authority is directed to consider the case of the petitioner afresh in light of the aforesaid circular dated 13-4-1970 and the relevant rules and orders. The said exercise to be completed within a period of three months from today. However, as the charge sheet has already been issued and the departmental inquiry is initiated which is to be completed within a period of six months, the regularization, if any of the period of suspension would be subject to the final outcome of the

disciplinary proceedings and if ultimately the petitioner is held to be guilty of any misconduct, in that case, the period of suspension will be dealt with in accordance with the provisions of law. Thus, the aforesaid regularization would be subject to ultimate outcome of the departmental proceedings, which has been initiated for which the charge sheet has now been issued on 17-3-2007. The DDO/Deputy DDO, Dang are directed to complete the departmental inquiry against the petitioner within a period of six months from today.

6. For the reasons as stated above, the petition succeeds in part. Rule made absolute to the aforesaid extent. No costs.

(M.R.SHAH,J.)

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